

CHAPTER NO. 880

HOUSE BILL NO. 2286

By Representatives Kisber, Maddox, Bone, Buck, White, McMillan, Sands, Lewis and Mr. Speaker Naifeh and Representatives Fitzhugh, Winningham, Hood, Bowers, Armstrong, Caldwell, Vincent, Sharp, Bittle, Brenda Turner, Ridgeway, Shepard, Pinion, Montgomery, Wood, Buttry, Hagood, Sargent, McDonald, Newton, Shaw, Curtiss, Phelan, Fowlkes, Tindell, Fraley

Substituted for: Senate Bill No. 2624

By Senators Cooper, Haun, Miller

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 5, relative to medical assistance and TennCare.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, "The TennCare Reform Act of 2002".

SECTION 2. Tennessee Code Annotated, Section 71-5-106, is amended by adding the following as new subdivisions:

(l) Beginning January 1, 2003, the bureau of TennCare or its designee shall determine eligibility for TennCare on an annual basis as follows:

(1) All non-medicaid eligible TennCare enrollees will have the responsibility to re-establish their eligibility annually and in the absence of re-application and re-determination their coverage will automatically expire at the end of twelve (12) months;

(2) Upon notification by the bureau of TennCare, the enrollee must contact the bureau or its designee to schedule an appointment and provide information as required by TennCare regulations;

(3) Notification to the enrollee is presumed when a notice is mailed to the last known address;

(4) Lack of receipt of the notification does not excuse responsibility of the enrollee to schedule an appointment for redetermination of eligibility if the enrollee has changed address and failed to notify the bureau of TennCare; and

(5) Failure of the enrollee to contact the bureau of TennCare or its designee concerning a change in address relieves the bureau of responsibility for contacting the enrollee.

(m) To the extent permitted by federal law, the state may impose a reasonable fee for costs of eligibility determinations for applicants applying for medical assistance as part of the medically eligible expansion population under the TennCare waiver.

(n) In the TennCare waiver expansion population, except for persons medically eligible as uninsurable persons, enrollment shall not be permitted for

individuals from households with incomes of greater than two hundred fifty percent (250%) of federal poverty levels.

(o) Except as may be required by federal law, after the effective date of this act, no person nineteen (19) years of age or older shall be eligible to receive TennCare benefits (except employee health insurance subsidy payments) as a part of the waiver's expansion population if such person is eligible to participate in a group insurance plan offered through an employer, a family member's employer, a professional association or school, or has access to medicare or COBRA coverage. For purposes of this subsection (o), "group insurance plan" means creditable coverage, as such coverage is defined in Section 56-7-2802.

(p) Not later than January 1, 2003, all determinations of eligibility for persons medically eligible as uninsurable in the TennCare waiver's expansion population shall be made on the basis of health condition based upon a review of medical records.

SECTION 3. Tennessee Code Annotated, Section 71-5-102, is amended by designating the existing language of the section as subsection (a) and by adding the following as a new subsection (b):

(b)

(1) Except as may be required by federal law or regulation, it is hereby declared to be the public policy of the state of Tennessee that participation in the TennCare program, or its successor programs, is not an entitlement and is conditional upon, among other things, specific appropriations for the program.

(2) Not less than annually, the governor shall recommend and the general assembly may, through provisions of the general appropriations act, prioritize the funding for the TennCare program in a manner which specifies that funds are available to:

(A) continue coverage for enrollees currently in the program;

(B) extend coverage to potential new enrollees, or categories thereof, at current, higher or lower income levels;

(C) withdraw coverage from all enrollees not eligible for Medicaid; or,

(D) reimburse medical care providers for costs unreimbursed by managed care organizations out of state funds appropriated for that purpose or such federal funds as would be permitted to be used for that purpose under the terms of the TennCare waiver.

(c) Continuation, extension and withdrawal of coverage for enrollees in the TennCare program shall be determined in accordance with such priorities, if any, established by the general assembly in the general appropriations act.

SECTION 4. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as new sections:

Section 71-5-192. On or before January 1, 2004, a comprehensive, integrated information management system will be operational for the bureau of TennCare. Not less frequently than quarterly, the office of information resources in the department of finance and administration shall provide progress assessments concerning such system to the information systems council (ISC) and the fiscal review committee.

Section 71-5-193. There shall be established a TennCare advisory board, appointed by the governor, comprised of not less than twelve (12) nor more than fifteen (15) individuals who shall be representative of health care providers, business leaders and health care consumers. The board shall provide advice and direction to the bureau of TennCare in the management of the TennCare program. At least quarterly, the bureau of TennCare and the department of commerce and insurance shall present to the board an update on compliance by participating managed care organizations with statutory and contractual requirements, including, but not limited to, prompt payment of claims, network adequacy and provision of non-network essential services. The governor shall determine the terms and organizational structure of the board and will strive to ensure racial and gender diversity.

SECTION 5. Any costs associated with the implementation of this act, except as to the costs of the Medicaid Fraud Control Unit of the Tennessee bureau of investigation, shall be paid from existing funds appropriated to the TennCare program.

SECTION 6. Tennessee Code Annotated, Section 71-5-110, is amended by adding the following language at the end of subsection (b):

To the extent permitted by federal law, the application of a self-employed individual for medical assistance as a part of the TennCare program shall include a copy of the individual's most recent federal income tax return.

SECTION 7. Tennessee Code Annotated, Section 71-5-118, is amended by adding the following as a new subsection (g):

(g) The bureau of TennCare shall establish, through its Program Integrity Unit, a system to randomly investigate persons involved in the medical assistance program to monitor for violations of subsection (b) by such persons. The Program Integrity Unit shall investigate applicants, employers, providers and other persons involved in the medical assistance program. Violations of subsection (b) shall be regarded as TennCare fraud and the Program Integrity Unit shall refer appropriate cases of fraud to any appropriate law enforcement agencies, including the Tennessee bureau of investigation, for appropriate action. The Program Integrity Unit shall report concerning the activities of the investigative program to the house and senate judiciary committees on or before January 30th of each year.

SECTION 8.

(a) The fiscal review committee, in consultation with the bureau of TennCare and the select oversight committee on TennCare, shall study the feasibility of outsourcing eligibility determinations and reverifications for the TennCare expansion population, including requesting information from potential contractors. It is the legislative intent that information from interested potential contractors be received by October 15, 2002.

(b) The fiscal review committee, in consultation with the bureau of TennCare and the select oversight committee on TennCare, shall evaluate the responses from potential contractors and shall, no later than January 1, 2003, report its findings to the general assembly, the commissioner of finance and administration, the comptroller of the treasury and the governor, relative to whether eligibility and re-verification services should be contracted and procured through competitive proposals.

SECTION 9. Tennessee Code Annotated, Section 71-5-116, is amended by adding the following amendatory language at the end of subsection (c):

(1) To facilitate and enhance compliance with this subsection, the department of health shall promptly notify the bureau of TennCare, in a format to be specified by the bureau, of the death of any individual fifty-five (55) years of age or older. Such notification shall include the decedent's name, date of birth, and social security number. It is the legislative intent of this subsection that the bureau of TennCare strive vigorously to recoup any TennCare funds expended for a decedent after the date of death.

(2) Before any probate estate may be closed pursuant to title 30, with respect to a decedent who, at the time of death, was enrolled in the TennCare program, the personal representative of the estate shall file with the clerk of the court exercising probate jurisdiction a release from the bureau of TennCare evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law, unless waived by the bureau.

SECTION 10. Tennessee Code Annotated, Section 71-5-118, is amended by adding the following amendatory language as a new subsection to be appropriately designated:

() Without regard to any other civil or criminal liability that might attach, by operation of this section or any other law, to an enrollee or applicant's action in obtaining medical assistance or any assistance under this part, to which such person is not entitled, the bureau of TennCare shall have an administrative remedy for the recovery of the amount of any medical assistance benefits or payments improperly paid as a result of any misrepresentation made by such person, to the extent that such amount has not otherwise been recovered by the bureau. The bureau shall also have a right to recover in such administrative proceedings its reasonable costs and attorneys' fees, as well as interest on the amount owed by the person, calculated from the date that medical assistance was improperly paid. Any action against such person shall be treated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. In an administrative action under this subsection, the bureau shall show that the amount sought to be recovered was paid in the form of medical assistance as a result of material misrepresentation by the person against whom recovery is sought, but the bureau need not show that such misrepresentation was intentional or fraudulent.

SECTION 11. Tennessee Code Annotated, Section 71-5-118, is further amended by adding the following amendatory language as a new subsection to be appropriately designated:

() There is established within the criminal investigation division of the Tennessee bureau of investigation a "Medicaid Fraud Control Unit", which is separate and distinct from the state Medicaid agency. As regulated by federal law, the unit is authorized to investigate and refer for prosecution violations of all

applicable laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance or the activities of providers of medical assistance under the State Medicaid plan; Medicare fraud; and abuse or neglect in healthcare facilities receiving payments under the State Medicaid plan, such as board and care facilities as allowed by federal law. A summary of the unit's work shall be included in the bureau's annual report and shall be submitted annually to the judiciary committees of the general assembly.

SECTION 12. Tennessee Code Annotated, Section 71-5-118, is further amended by adding the following amendatory language as a new subsection to be appropriately designated:

() The bureau of TennCare shall report annually in writing to the judiciary committees of the general assembly regarding its collection activities of the estate recovery and enrollee fraud and abuse provisions of this chapter.

SECTION 13. Tennessee Code Annotated, Section 71-5-118, is further amended by adding the following amendatory language as a new subsection to be appropriately designated:

() All applicants for medical assistance under this part, and all applicants for reverification of eligibility to receive such assistance, shall receive a warning, in easily readable language, regarding the state recovery provisions, as well as the administrative, civil and criminal liability provisions of this chapter.

SECTION 14. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section to be appropriately designated:

Section _____. (a) No period of residence in this state shall be required as a condition for eligibility for medical assistance under this chapter, but an individual who does not reside in this state shall not be eligible.

(b) The bureau of TennCare shall adopt rules for determining whether an applicant is a resident of this state subject to the requirements of federal law. The rules shall require that state residency is not established unless the applicant does both of the following:

(1) The applicant produces one (1) of the following:

(A) A current Tennessee rent or mortgage receipt or utility bill in the adult applicant's name.

(B) A current Tennessee motor vehicle driver's license or identification card issued by the Tennessee department of safety in the adult applicant's name.

(C) A current Tennessee motor vehicle registration in the adult applicant's name.

(D) A document showing that the adult applicant is employed in this state.

(E) A document showing that the adult applicant has registered with a public or private employment service in this state.

(F) Evidence that the adult applicant has enrolled his or her children in a school in this state.

(G) Evidence that the adult applicant is receiving public assistance in this state.

(H) Evidence of registration to vote in this state.

(I) Other evidence deemed sufficient to the bureau and/or the department of human services as proof of residency in this state.

(2) The adult applicant declares, under penalty of perjury, that all of the following apply:

(A) The adult applicant does not own or lease a principal residence outside of this state.

(B) The adult applicant is not receiving public assistance outside of this state. As used in this subdivision, "public assistance" does not include unemployment insurance benefits.

(3) Residency for minors shall be determined as otherwise permitted under state and federal law. A minor for the purposes of this subdivision is a person younger than nineteen (19) years of age.

(c) A denial of determination of residency may be appealed in the same manner as any other denial of eligibility. A determination of residency shall not be granted unless a preponderance of the credible evidence supports the adult applicant's intent to remain indefinitely in this state. In making determinations or verifications of residency, subject to the requirements of subsection (b), the department of human services shall apply the same policies and procedures as are applied in the determination of residency for other programs administered by the department to the extent permitted under or by federal law.

SECTION 15. Tennessee Code Annotated, Section 71-5-110(c)(1), is amended in the second sentence by deleting the language "two (2) months" and by substituting instead the language "thirty (30) days".

SECTION 16. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section to be appropriately designated:

Section _____. In all actions for the transfer of income or resources from an institutionalized spouse for the support of the community spouse, the court shall apply the standards utilized to determine medicaid eligibility in this state, regardless of any state laws relating to community property or the division of marital property.

SECTION 17. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following language as a new appropriately designated section:

Section _____.

(a) Aliens shall be eligible for medical assistance, including participation in the TennCare program, only to the same extent as permitted under federal law

and regulations for receipt of federal financial participation under Title XIX of the federal Social Security Act, except as otherwise provided in this section.

(b) In accordance with Section 1903(v)(1) of the federal Social Security Act (42 U.S.C. Section 1396b(v)(1), an alien shall only be eligible for the full scope of medical assistance benefits, if the alien has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law.

For purposes of this section, aliens "permanently residing in the United States under color of law" shall be interpreted to include all aliens residing in the United States with the knowledge and permission of the United States Immigration and Naturalization Service and whose departure the United States Immigration and Naturalization Service does not contemplate enforcing and with respect to whom federal financial participation is available under Title XIX of the federal Social Security Act.

SECTION 18. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section to be appropriately designated:

Section ____.

(a) All proprietary information, including but not limited to, provider reimbursement information provided to either the Tennessee Department of Commerce and Insurance or the TennCare Bureau, or any successor entity operated by the State of Tennessee for the purpose of administering the TennCare program, or any successor program shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act as codified at Tennessee Code Annotated, Section 10-7-101, et seq. Nothing contained in this section shall be construed as to conflict with or obviate the provisions of Public Chapter 660 of the 102nd General Assembly enacted on April 24, 2002.

(b) The provisions of this section shall not apply to disclosures to the Medicaid fraud unit of the Tennessee bureau of investigation for law enforcement activities authorized by federal or state law.

(c) Nothing in this section shall be construed to limit access to, or use of, these records by governmental agencies performing official functions.

SECTION 19. The fiscal review committee shall investigate any contracts between a TennCare managed care organization and a specific credentialing verification organization which are required to be made by the bureau of TennCare, and report its findings to the finance, ways and means committees of the senate and the house of representatives.

SECTION 20. The provisions of this act shall only apply so long as the state operates the TennCare program as a statewide waiver with an expansion population of uninsureds and uninsurables under Section 1115 of the federal social security act. If at any time the state ceases to operate such a waiver, then the provisions of this act shall not be applied and enforcement of such provisions shall be terminated.

SECTION 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 22. This act shall take effect on July 1, 2002, the public welfare requiring it.

PASSED: July 4, 2002


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this day of 2002

DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 2286 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.